IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9938 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NILESH @ NIRMAL ISHWARBHAI SANGHANI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MR AD OZA, GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 03.12.2002 passed by the Police Commissioner, Rajkot City, against

him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 03.12.2002.

2. The grounds served upon the petitioner and placed on record reveal that the detaining authority placed reliance on the fact of registration of the crimes against the petitioner on 25.08.2002 under Sections 65 (a)(e), 66(b), 116(b) and 81 of the Bombay Prohibition Act. The detaining authority also took into consideration the unreported incidents occurred on 11.8.2002 and 26.10.2002 as in-camera statements of two witnesses recorded on 01.12.2002 by the proposing authority. These statements were verified by the detaining authority on 2.12.2002 and on 3.12.2002 the order impugned in this petition came to be passed by the detaining authority.

3. Learned Advocate Ms. Banna Dutta for Mr. AR Shaikh for the petitioner and learned GP Mr. AD Oza for the respondents were heard at length. Learned GP has placed on record the affidavit-in-reply filed by the Detaining Authority which is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the GP, it clearly appears that the matter can be disposed of on the ground whether there was delay in passing the order impugned in this Special Civil Application. Undoubtedly, the chronology indicates that the illegal activities lodged against the petitioner reveal three offences registered against him on 25.8.2002 and unreported incident occurred on 11.8.2002 and on 26.10.2002. If we consider the last unreported incidents on 26.10.2002, the order passed on 3rd of December, 2002 is an order passed with delay of one and half months. In the affidavit-in-reply, it has been urged that the sponsoring authority was collecting the material about the illegal activities of the

petitioner, but the material which collected by the sponsoring authority, as placed on record, are statements of the witnesses, recorded by the sponsoring authority on 1st of December, 2002. There is no material as to the illegal activities of the petitioner other than recording statements collected by the sponsoring authority. So, after the last unreported incident, the order of detention came to be passed on 3.12.2002. Therefore, the order in question is required to be quashed and set on the ground that the delay in passing the order of detention is fatal to the detention order.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Commissioner of Police, Rajkot City on 03.12.2002 under Section 3(1)

of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty fortwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair